IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JERRY J. SEXTON,	**)**	
	)	**Civil Action 7:00CV00578**
Petitioner,	**)**	
	)	
v.	**)**	**Memorandum Opinion**
	)	
UNITED STATES OF AMERICA,	**)**	
	)	**By: Samuel G. Wilson**
Respondent.	**)**	**United States District Judge**

This is a motion pursuant 28 U.S.C. § 2255 by Jerry Sexton challenging his convictions for various drug and firearm offenses. Sexton raises a host of claims. All of them, essentially, rely on two core assumptions: law enforcement officials unlawfully searched his motor home, and the government failed to disclose evidence bearing on the credibility of a trial witness. The court finds that all of his claims either lack merit, have been decided, or are not properly before the court.

I.

The circumstances surrounding Mr. Sexton's arrest and a search of his motor home are fully chronicled in the Court of Appeals' opinion affirming his conviction, See United States v. Sexton, 1999 WL 288380 (4th Cir.), and the court will not belabor them here. It is sufficient to note that, in March 1996, Virginia state police received a dispatch to "be on the lookout" for Mr. Sexton's motor home; the "BOLO" described the motor home with some particularity; gave its South Carolina plate number; stated that its occupants included Mr. Sexton and his wife and possibly a third individual who were wanted and were "extremely armed and dangerous... with excessive weapons"; and noted that the Sextons were using the aliases of George Allen Thompson and Lynn Carraway. A Virginia State

Trooper, David Albert, located the motor home and called for backup. The officers confronted the Sextons, who were carrying and presented false South Carolina drivers licenses identifying them as Lynn Carraway and George Thompson, and arrested them. An officer who conducted a protective sweep of the motor home located two hand guns; a female Officer who searched Ms. Sexton at the jail for weapons and contraband found cocaine in her purse; and in inventorying the contents of the motor home, officers found more than 500 grams of cocaine, a pen gun, cell phones, police scanners, and pagers.

The government charged the Sextons with various drug trafficking and firearm offenses. The Sextons moved to suppress, claiming that the police lacked probable cause to arrest Ms. Sexton and that, had they not arrested her, Ms. Sexton would have been free to leave with the motor home, because, in fact, there was no outstanding warrant for her arrest, and, consequently, the police would not have discovered the damaging evidence used to convict them. The Sextons conceded, however, that the dispatch coupled with the warrants on file for Mr. Sexton provided probable cause to arrest him. The court denied the motion to suppress; a jury found the Sextons guilty of drug trafficking and firearm offenses; and they appealed the denial of the suppression motion. In May 1999, the Court of Appeals affirmed, stating:

> In sum, the defendants concede that it was proper for the police officers to stop the motor home, detain the Sextons, and make reasonable inquiry of them. Mr. Sexton conceded at the suppression hearing that there was probable cause to arrest him. Without deciding whether the BOLO alone was sufficient to provide probable cause for the arrest of Ms. Sexton, we conclude that when she presented false evidence of her identity to Trooper Albert, he had probable cause to arrest her. Because Ms. Sexton was lawfully arrested, the ensuing search of her possessions at the jail, which uncovered cocaine, was valid. And because both of the Sextons were lawfully arrested, the inventory search of the Winnebago was also valid. Finally, the district

court did not err in finding that the inventory search was conducted according to Virginia State Police policy.

In June 2000, Sexton filed a motion pursuant to § 2255 to vacate his sentence. That original motion raised four claims: two Fourth Amendment claims, one claim related to failure of the prosecution to disclose evidence favorable to Sexton; and one claim related to the denial of effective assistance of counsel. Nearly eleven months later, in May 2001, Sexton filed the pleading detailing what he claimed to be "new evidence" concerning the credibility of a trial witness and his Fourth Amendment claims, and a list of additional issues he styled "Additional Issues Relating Back to Original Proceeding," "none of which," as the Court of Appeals later noted on appeal, "relied on any of the allegedly new evidence." United States v. Sexton, 2003 WL 601443 (4th Cir.).

After giving Sexton numerous extensions to amend his petition, the court *sua sponte* dismissed it as untimely under 28 U.S.C. § 2244 (d). The court also held that even if the motion had been timely Sexton was not entitled to relief on the merits of his Fourth Amendment claims or his claim regarding the supposed "new evidence" concerning the credibility of a trial witness.

Sexton appealed, and the Court of Appeals dismissed his appeal in part, and vacated and remanded in part. The court concluded that Sexton had not made a "substantial showing of the denial of a constitutional right" as to his Fourth Amendment claims or as to his claim regarding the alleged "new evidence" concerning the credibility of a trial witness and accordingly denied a certificate of appealability as to those claims. However, based on its intervening decision in Hill v. Braxton, 277 F.3d 701 (4th Cir. 2002), which requires notice before the court *sua sponte* dismisses a § 2255

motion as untimely, the court vacated and remanded for further proceedings as to Sexton's claim that the government failed to disclose favorable evidence, his effective assistance claim, and any of his "additional issues" which relate back to those claims:

> [A]s to Sexton's claim related to the failure of the prosecution to disclose evidence favorable to the defendant, his claim of denial of effective assistance of counsel, and *any 'additional issues' which relate back to these claims*, see United States v. Pittman, 209 F.3d 314, 318-18 (4th Cir. 2000), we grant a certificate of appealability, vacate the District Court's order and remand to the District Court to provide Sexton with the notice and opportunity to respond to which he is now entitled pursuant to Hill.

United States v. Sexton, 2003 WL 601443 (4th Cir.) (emphasis added).

II.

Despite the Fourth Circuit's mandate, Sexton seeks to raise a host of claims not before the court on remand. Sexton maintains that he is permitted to raise them because, he maintains, the Court of Appeals lacked jurisdiction to adjudicate them on appeal because they were not before that court. (Petitioner's Reply, June 25, 2004). Thus, for example, he seeks to raise all of his Fourth Amendment claims. However his arguments are frivolous. He cannot relitigate those claims. The court will only stop to note that if the Court of Appeals lacked jurisdiction, it lacked jurisdiction to vacate this court's final order dismissing all of Sexton's § 2255 claims and to note that the Court of Appeals also rejected his Fourth Amendment claims on the merits when Sexton appealed this court's judgment of conviction. Of course, those are not the only deficiencies in Sexton's arguments, just two very basic deficiencies. It follows, that he is not entitled to relief on his Fourth Amendment claims.

III.

Sexton also seeks to raise claims regarding alleged "new evidence" about the credibility of a trial witness, Teresa Jackson. The court rejected those claims when it first dismissed Sexton's § 2255 motions stating:

> With regard to the "new evidence" concerning Teresa Jackson's credibility as a witness, the court is of the opinion that even without considering Teresa Jackson at all, the evidence against Sexton was sufficient to support his convictions. Therefore, Sexton would be unable to show that the information regarding Jackson was material such that had it been introduced at trial, there would have been a likelihood of a different outcome.

Sexton v. United States, Civil Action No. 7:00cv00578, Dec. 4, 2001.

The Court of Appeals reviewed the claims, concluded that Sexton had not made a substantial showing of the denial of a constitutional right, and denied a certificate of appealability as to those claims. Accordingly, they are not properly before the court, and Sexton is not entitled to relief on them.[1]

IV.

The first claim raised in Sexton's original motion to vacate filed in July 2000 that is now properly before the court is Sexton's claim that the government failed to disclose evidence favorable to him. (Sexton's § 2255 motion at pp. 4-5, July 10, 2000).[2] Sexton explains the factual basis for the claim in a memorandum he filed with his motion. Essentially, he claims that the government knew there were no outstanding warrants when they arrested him. In his own words, his conviction "was obtained by the unconstitutional failure of the prosecutor to disclose to the defendant evidence favorable to the

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[1] The court also notes that it required the government to address them so as to place other claims in context and remains convinced that it properly rejected them on the merits.

[2] Sexton's recitation of the supporting facts in his motion to vacate is exceptionally disjointed. (Sexton's § 2255 motion at pp. 4-5, July 10, 2000.)

defendant..., that, in fact, there were no such warrants outstanding." (Mem. of law in support Sexton's § 2255 motion at p. 13, July 10, 2000). The court rejects the claim because there is no evidence that the claim is true.

Evidence at the suppression hearing showed that there were outstanding warrants for Sexton. (Suppression hearing, May 12, 1997, pp. 99-109).[3] Therefore, there is no factual basis for the claim. Accordingly, the court rejects the claim.

V.

The second claim raised in Sexton's original motion to vacate filed in July 2000 that is now properly before the court is Sexton's claim that he was denied effective assistance of counsel. Sexton explains that the claim is based on counsel's stipulation "that the bolos provided the officers with the reasonable suspicion needed to 'Terry Stop' [Sexton's vehicle and question him and his wife]... despite the fact that these bolos/teletypes were not in the officers' possession during the stop, search and arrest." (Sexton's section 2255 motion at p. 5, July 10, 2000). The court finds the claim to be frivolous and rejects it essentially for the same reasons it rejected a similar claim by Sexton's wife:

> Sexton's Sixth Amendment claims are premised on her view that she was subjected to Fourth Amendment violations and that her counsel's stipulations and arguments prevented this court and the court of appeals from properly deciding the issues. Apart from counsel's trial stipulations and arguments, however, this court is convinced that the police properly detained and ultimately arrested Sexton and that the ensuing searches were not unreasonable under the Fourth Amendment. To establish an ineffective assistance of counsel claim, Sexton must prove that her counsel's performance was unconstitutionally deficient and the deficiency prejudiced her defense. See Strickland v.

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[3] Indeed, this court issued a warrant for his arrest in another case on July 19, 1991, see United States v. Sexton, 3: 91-cr-70110, and that warrant apparently was still outstanding when he was arrested for the conduct that resulted in the charges in this case.

> Washington, 466 U.S. 668, 687 (1986). Even if Sexton were able to satisfy Strickland's performance prong, she is unable to satisfy the prejudice prong. Accordingly, the court rejects Sexton's Sixth Amendment challenge.

Sexton v. United States, 7:99CV00840, March 26, 2001.

VI.

Finally, Sexton raises numerous "additional issues" in a pleading he filed in May 2001, before the court denied his § 2255 motion. The Court of Appeals granted a certificate of appealability as to any of those " additional issues" that relate back to his failure to disclose and his ineffective assistance claims. The court has reviewed the "additional issues" and concludes that only one of them, the first additional issue he raises, even colorably, relates back, and that issue is frivolous.

Sexton claims that counsel was ineffective in challenging the inventorying of his motor home because he did not introduce the "departmental policy" of the Virginia State Police governing inventorying, which, according to Sexton, would have demonstrated that "Trooper Albert violated departmental policy." (Additional Issues, at p. 6, May 18, 2001). The court rejects the claim essentially on the same grounds it rejected Sexton's other ineffective assistance claim regarding counsel's handling of his Fourth Amendment challenge. Without even reaching the dubious assertion that his counsel performed deficiently, the court rejects Sexton's premise that he was subjected to a Fourth Amendment violation and that had counsel performed differently there likely would have been a different outcome. Consequently, the court rejects the claim.

VII.

For the reasons stated, the court dismisses Sexton's motion to vacate.[4]

ENTER: This September 23, 2004.

UNITED STATES DISTRICT JUDGE

[4] The court originally dismissed Sexton's motion because it concluded that the motion was untimely and alternatively dismissed some of its claims on the merits. After it did so and after the Court of Appeals vacated and remanded, the Supreme Court decided Clay v. United States, 537 U.S. 522 (2003) which held that the one-year statute limitations for filing a section 2255 motion does not begin to run until the expiration of time for seeking direct review. Nevertheless, the court gave Sexton the notice the Court of Appeals directed, and Sexton responded:

> Petitioner could cite a large number of justifiable grounds for... timeliness, but has decided not to do so in light of [Clay].... Neither would it serve any useful purpose to elaborate why the District Court has obviously overlooked [Clay].... To do so would only give the court another bulky motion that would only consume more of its time.

(Sexton Mem. at p. 3, August 5, 2003). Based on Clay, the court found Sexton's *original* motion timely. Clay does not impact his "additional issues."

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JERRY J. SEXTON,	**)**	
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	)	
v.	**)**	**FINAL ORDER**
	)	
UNITED STATES OF AMERICA,	**)**	
	)	**By: Samuel G. Wilson**
Respondent.	**)**	**United States District Judge**

In accordance with the Memorandum Opinion entered this day, it is **ORDERED** and **ADJUDGED** that Sexton's motion is **DISMISSED** and **STRICKEN** from the active docket of the court.

Sexton is advised that he may appeal the dismissal of his claims pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure by filing a notice of appeal with this court within 60 days of the date of entry of this Order, or within such extended period as the court may grant pursuant to Rule 4(a)(5).

The Clerk of the Court is directed to send certified copies of this Order and the accompanying Memorandum Opinion to the petitioner and to the counsel of record for the respondent.

ENTER: This September 23, 2004.

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UNITED STATES DISTRICT JUDGE